CHONG SENG YONG

v.

CREDIT CORP. (M) BHD.

HIGH COURT MALAYA, JOHOR BAHRU
MOHD. YUSOF ABDUL RASHID J
[CIVIL APPEAL NO. 17 OF 1979]
15 JUNE 1982

HIRE PURCHASE: *Claim for wrongful repossession of motor car - Default in the monthly instalments - Notice of Intention to Re-possess - Conditions to be observed by owner - 2 successive defaults.*

The plaintiff filed an action for damages against the defendants for wrongful repossession of his motor car which the plaintiff had hired from the defendants on 5 October 1976. The hire purchase price and term charges was RM13,541.40 payable by a deposit of RM3,541.50 and 30 equal monthly instalments of RM333.33 each commencing from 5 November 1976. On 13 January 1978, the defendants re-possessed the said motor car as the plaintiff was alleged to have defaulted 2 instalments due on 5 November 1977 and 5 December 1977 after serving the notice of intention to re-possess dated 13 December 1977 which was posted on 14 December 1977. However, the evidence disclosed that the defendants' employee had received a cheque from the plaintiff as payment of an instalment on the evening of 14 December 1977 and issued a receipt for it on 15 December 1977.

Held:

[1] It is the intention of the legislature to impose condition precedent that before repossession shall be effected, the hirer shall be in arrears of two successive instalments when the notice as set out in the fourth schedule to the Act is issued to the hirer.

[2] To render lawful the taking into possession of the vehicle from the plaintiff, it was incumbent on the defendants to comply strictly with the requirements provided under s. 16(1) and reg. 3(1). Failing which the repossession of the vehicle shall to be unlawful for not being in compliance with the legal provisions.

[3] It is the finding of the Court that when the service of the notice of intention to re-possess was effected, only one instalment was due and owing, and as such the repossession was a breach of the warranty under the hire-purchase agreement relating to peaceful and quiet enjoyment of the use of the said vehicle by the plaintiff, occasioning the liability on the defendants to compensate the plaintiff in damages.

[4] The plaintiff shall be awarded special damages in the sum of RM390, general damages of RM2,000 and costs.

[Appeal allowed.]

Legislation referred to:
Hire Purchase Act 1967, ss. 16(1), 43
Hire Purchase (Recovery of Possession and Maintenance of Records by Owners) Regulations 1976, reg. 3(1)
Interpretation Act 1967, s. 12

For the appellant & respondent in Cross Appeal - T.S. Chong
For the respondent & appellant in Cross Appeal - K. Ananthan

JUDGMENT

Mohd. Yusof Abdul Rashid J:

In the lower Court, the plaintiff claimed damages for the alleged wrongful repossession by the defendants of motor vehicle No. JT 3538 which the plaintiff hired from the defendants under a hire-purchase agreement entered into on 5 October 1976. The learned Magistrate who dealt with the action dismissed the plaintiff's claim. The plaintiff appeals to the High Court.

The undisputed facts of the case may be briefly stated as follows:

On 5 October 1976, by a hire-purchase agreement the defendants hired to the plaintiff a station wagon Mazda 808 bearing registration No. JT 3538, the hire purchase price and term charges being RM13,541.40 payable by an initial payment by way of deposit of RM3,541.50 and thirty equal monthly instalments of RM333.33 each commencing from 5 November 1976.

On 13 January 1978 purporting to exercise its rights under s. 15(1) of the Hire Purchase Act 1967, the defendants re-possessed the said motor vehicle having served a notice of intention to re-possess dated 13 December 1977 wherein the plaintiff was alleged to have defaulted in the payment of two instalments due on 5 November 1977 and 5 December 1977 respectively.

It is to be noted that the Hire Purchase Act 1967 was revised in 1978 and s. 15(1) is re-enacted without any change at all under the revised text as s. 16(1). It is convenient to refer to the provisions of the Act under the revised text.

Under s. 16(1) of the Act, before an owner exercises any power of taking possession of any goods comprised in a hire-purchase agreement arising out of any breach of the agreement relating to the payment of instalments, three conditions shall first be satisfied -

(a) there has been two successive defaults of payments of instalments or a default in respect of the last payment,

(b) the owner has served on the hirer a notice, in writing, in the form set out in the fourth schedule, and

(c) the period fixed by the notice, which shall not be less than twenty-one days after the service of the notice, has expired.

Further, under reg. 3(1) of the Hire Purchase (Recovery of Possession and Maintenance of Records by Owners) Regulations 1976 (PU (A) 1/77), hereinafter referred to as the Hire Purchase Regulations, which came into force on 1 May 1977, it is provided that -

> (1) An owner shall in addition to the notice in the form set out in the Fourth Schedule of the Act send to the hirer with a copy to the Controller, a notice informing the hirer that the owner intends to take possession of the goods comprised in the hire purchase agreement.

The evidence before the lower Court disclosed that one, Choo Chee Ming, DW1, an employee of the defendants, had posted by registered post the notice as set out in the fourth schedule to the Act on the morning of 14 December 1977 though the said notice was dated 13 December 1977. This witness testified that he received a cheque from the plaintiff as payment of an instalment on the evening of 14 December 1977 and issued a receipt for it on 15 December 1977. It is to be noted that the office of the defendants was at the material time in Kuala Lumpur. The notice required to be served under reg. 3(1) of the Hire-Purchase Regulations was posted along with the notice in the form of the fourth schedule.

I was urged by both parties to give judicial interpretation of s. 16(1) of the Act but in the lower Court undue emphasis was attributed to the date when the notice under s. 16(1) was despatched instead of the date when the said notice was served on the plaintiff. As stated earlier under s. 16(1) of the Act, not only shall there be a default of two successive instalments, a notice as set out in the fourth schedule to the Act shall be served on the hirer. Thus, in my view it is the intention of the legislature to impose a condition precedent before repossession shall be effected, the hirer shall be in arrears to two successive instalments when the notice as set out in the fourth schedule to the Act is served on the hirer.

In the instant case, the notice as set out in the fourth schedule to the Act was posted in the morning of 14 December 1977 but there is no direct evidence regarding the receipt of the said notice by the plaintiff who adduced in evidence that he received the said notice on or about 13 December 1977. Under s. 43 of the Act it is provided that -

> Any notice.... required .... to be served on .... hirer under this act may be served.....
>
> (a) .....
>
> (b) .....
>
> (c) by posting it by registered post addressed to him at his last known place of abode or business.

and the relevant provisions of s. 44 of the Act are -

> The... oral evidence of an owner .....or his servant .... as to the ... posting of any notice .... to be served ... by this Act is admissible as *prima facie* proof of ... sending of the notice.....

Since there was direct evidence that the said notice was posted on 14 December 1977 but not regarding the date when it was received by the plaintiff, reliance has to be made on the presumption under s. 12 of the Interpretation Act 1967 which provides:

> Where a written law authorises or requires a document to be served by post, then, until the contrary is provided, service -
>
> (a) shall be presumed to be effected by properly addressing, prepaying and posting by registered post a letter containing the document; and
>
> (b) shall be presumed to have been effected at the time when the letter would have been delivered in the ordinary course of the post.

In the circumstances, it is reasonable to assume that the said notice was delivered to the plaintiff at the earliest on 15 December 1977 and at the latest on 16 December 1977, mindful of the fact that the said notice was posted in Kuala Lumpur and the plaintiff's office was in Johore Bahru. Hence, service of the notice under s. 16(1) of the Act is presumed to have been effected either on 15 December 1977 or 16 December 1977. Be that as it may, since the defendants had received the payment of instalment falling due on 5 November 1977, on 14 December 1977 for which the acknowledgment thereof was issued by the defendants on 15 December 1977, when service of the notice under s. 16(1) of the Act was effected, the instalment due on 5 December 1977 was the only instalment owing and remaining unpaid. In the circumstances, for the purposes of s. 16(1), the notice was bad in law.

In my judgment, to render lawful the taking into possession of the vehicle from the plaintiff, it was incumbent on the defendants to comply strictly with the requirements provided under the said s. 16(1) and reg. 3(1). Failing which the repossession of the vehicle shall be unlawful for not being in compliance with the legal provisions. The purpose of enacting those provisions was to provide protection to hirers against the harsh and unconscionable practices

of certain owners who are without scruples. They are to restrict the random use of this frequently abused privilege of the right to re-possess by providing certain conditions precedent before actual repossession could be effected. Since the principal purpose of enacting those provisions is to protect the hirer, the interpretation most favourable to the hirers has to be applied. The most favourable interpretation, where the hirers are concerned, should be that under s. 16(1) of the Act, on the service of the notice of intention to re-possess being effected, the hirer must have defaulted in paying two successive instalments. If that fact does not exist at that material time the said notice is bad in law to render lawful the taking into possession of any vehicle comprised in a hire-purchase agreement.

In the instant case, it is my finding that when the service of the notice of intention to re-possess was effected, only one instalment was due and owing, and as such the re-possession was a breach of the warranty under the hire-purchase agreement relating to peaceful and quiet enjoyment of the use of the said vehicle by the plaintiff, occasioning the liability on the defendants to compensate the plaintiff in damages.

The appeal is allowed with costs both in this Court and in the lower Court and the plaintiff shall be awarded the following damages:

(a) RM390 being the expense incurred by the plaintiff in providing alternative transport for the plaintiff's workers at RM30 per day for 13 days;

(b) General damages in the sum of RM2,000.

General damages are awarded on the ground that the defendants by the unlawful taking of possession had not only interfered with the peaceful and quiet enjoyment of the vehicle comprised in the hire-purchase agreement by the plaintiff, the defendants had put the plaintiff into public odium and ridicule, especially in the eyes of the plaintiff's workers. Bearing in mind the standing of the plaintiff in public and in his field of business, a sum of RM2,000 is a reasonable sum to be awarded as general damages.

The sum deposited by the plaintiff is hereby returned to the plaintiff.

The defendants filed a cross-appeal. I found no merit in the cross-appeal and it it dismissed with costs. The order of the learned Magistrate ordering the defendants to refund a sum of RM270 to the plaintiff is upheld.

Also found at [1982] CLJ 420